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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF WASHINGTON**

14 MARISSA REYES, LEAGUE OF
15 UNITED LATIN AMERICAN CITIZENS,
LATINO COMMUNITY FUND

Case No.: 4:21-cv-05075-SMJ

16 Plaintiffs,

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

17 v.

Judge: Salvador Mendoza, Jr.

18 BRENDA CHILTON, in her official
19 capacity as Benton County Auditor and
Canvassing Review Board member, ANDY
20 MILLER, in his official capacity as Benton
County Prosecutor and Canvassing Review
21 Board member, JEROME DELVIN, in his
official capacity as Benton County
22 Canvassing Review Board member,
23 CHARLES ROSS, in his official capacity
as Yakima County Auditor and Canvassing
24 Review Board Member, JOSEPH BRUSIC,
25 in his official capacity as Yakima County
Prosecutor and Canvassing Review Board
26 member, RON ANDERSON in his official

Date Action filed: May 7, 2021
Date set for trial:

**AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

AMEND LAW LLC
P.O. Box 13203
Burton, Washington 98013 ~ (206) 280-8724

1 capacity as Yakima County Canvassing
2 Review Board member, SKIP MOORE, in
3 his official capacity as Chelan County
4 Auditor and Canvassing Review Board
5 member, DOUGLAS J. SHAE, in his
6 official capacity as Chelan County
7 Prosecutor and Canvassing Review Board
8 member, BOB BUGERT in his official
9 capacity as Chelan County Canvassing
10 Review Board member

11 Defendants.

12 I. INTRODUCTION

- 13 1. Plaintiffs the League of United Latin American Citizens (LULAC), the Latino
14 Community Fund of Washington, and individual voter Marissa Reyes bring this action
15 for immediate injunctive and declaratory relief against Yakima County Auditor, Charles
16 Ross; Yakima County Prosecutor Joseph Brusic; Yakima County Chair of the Board of
17 County Commissioners, Ron Anderson; Benton County Auditor, Brenda Chilton; Benton
18 County Prosecutor Andy Miller; Canvassing Review Board member, Jerome Delvin;
19 Chelan County Auditor, Skip Moore; Chelan County Prosecutor and Canvassing Review
20 Board member Bob Bugert; and Canvassing Review Board member Douglas J. Shae
21 (collectively, “Defendants”), because the practices and impacts of the County
22 Defendants’ verification of mail ballots discriminates against Latino voters and other
23 racial minorities.

- 1 2. In the primary, general, and special elections of 2020, over 4,500 Latino¹ voters were
2 denied their right to vote.
- 3 3. Thousands of Latino voters have been, and continue to be, denied their fundamental right
4 to vote due to the discriminatory application and effect of the State's ballot signature
5 matching provisions and processes.
- 6 4. In the 2020 general election, mismatched signatures accounted for 74% of all rejected
7 ballots.
- 8 5. Ballots with Spanish surnames are significantly more likely overall to be rejected because
9 of a signature mismatch.
- 10 6. In the 2020 general election, Latino voters were on average 3 times more likely than
11 Anglo voters to have their ballot rejected for the sole reason of a perceived mismatched
12 signature.
- 13 7. In the counties with the highest percentage of Latino voters, the difference is more
14 pronounced. The greater the potential political representation of the Latino community
15 the more disparate treatment voters faced.
- 16 8. In the 2020 general election, Latino voters in Benton County were 3 times more likely to
17 have their ballots rejected for a perceived signature mismatch.
- 18 9. In the 2020 general election, Latino voters in Yakima County were 3.9 times more likely
19 than Anglo voters to have their ballots rejected for a perceived signature mismatch.
- 20 10. In the 2020 general election, Latino voters in Chelan County were 3.2 times more likely
21 than Anglo voters to have their ballots rejected for a perceived signature mismatch.
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26 ¹ This Complaint uses the terms "Hispanic" and "Latino" interchangeably to refer to individuals who identify as Latino/a and/or Hispanic.

- 1 11. In the years where turnout has increased, the difference between Latino and Anglo ballots
2 being rejected was materially more pronounced.
- 3 12. Statewide, Latino voter turn-out tripled in 2020 compared to 2019. The rate of rejection
4 due to a mismatch signature doubled in the same time period.
- 5 13. Latino voters are less likely to vote after having their ballots rejected for a perceived
6 mismatched signature. Latino voters whose ballots were rejected due to a signature
7 mismatch in 2019 were 3 times more likely to not vote in 2020 compared to other Latino
8 voters who did not have their ballots rejected.
- 9 14. Since 2013, the State of Washington's elections have been conducted almost entirely
10 through the mail.
- 11 15. Under this system, state law requires that each active registered voter of the state,
12 overseas voter, and service voter automatically be issued a mail ballot for each general
13 election, special election, or primary. Wash. Rev. Code Ann. § 29A.40.010.
- 14 16. While there are some in-person opportunities, to provide access for those with
15 disabilities, nearly all voters vote via a mail ballot. In 2019, 99.8% of all voters voted by
16 mail. In 2020, 99.3% of all voters voted by mail. *See* Kim Wyman, Office of the
17 Secretary of State Elections Division, 2020 Annual Report of WA State Elections
18 (January 2021),
19 [https://www.sos.wa.gov/_assets/elections/research/2020%20annual%20elections%20repo](https://www.sos.wa.gov/_assets/elections/research/2020%20annual%20elections%20report.pdf)
20 [rt.pdf](https://www.sos.wa.gov/_assets/elections/research/2020%20annual%20elections%20report.pdf).
21
- 22 17. In order for a ballot to be counted under Wash. Rev. Code Ann. § 29A.40.110, a voter
23 must affix their signature to the outer return envelope on the mail ballot that has a
24 declaration printed on it.
25
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1 18. Then, under the requirements described herein by the Legislature and Secretary of State,
2 local election officers undertake a signature matching process to verify each ballot.

3 a. A county's respective canvassing board or its designated representatives examine
4 the signature on the ballot envelope declaration in order to verify that the voter's
5 signature on the ballot envelope declaration matches the signature on file in the
6 county's voter registration record.
7

8 19. If a reviewer determines that the signatures do not match ("signature mismatch"), the
9 ballot is flagged and not counted until a voter corrects or cures the ballot.

10 20. A signature on a petition sheet (the outer envelope of the ballot) must be matched to the
11 signature on file in the voter registration records. The following characteristics must be
12 used to evaluate signatures to determine whether they are by the same writer: (1) The
13 signature is handwritten; (2) Agreement in style and general appearance, including basic
14 construction, skill, alignment, fluency, and a general uniformity and consistency between
15 signatures; (3) Agreement in the proportions of individual letters, height to width, and
16 heights of the upper to lower case letters; (4) Irregular spacing, slants, or sizes of letters
17 that are duplicated in both signatures; (5) After considering the general traits, agreement
18 of the most distinctive, unusual traits of the signatures. A single distinctive trait is
19 insufficient to conclude that the signatures are by the same writer. There must be a
20 combination or cluster of shared characteristics. Likewise, there must be a cluster of
21 differences to conclude that the signatures are by different writers. Wash. Admin. Code §
22 434-379-020.
23

24 21. A variation between the signature of the voter on the ballot declaration and the signature
25 of that voter in the registration files due to the substitution of initials or the use of
26

1 common nicknames is permitted so long as the surname and handwriting are clearly the
2 same. Wash. Rev. Code Ann. § 29A.40.110(3).

3 22. If the signature on the ballot declaration does not match the signature on the registration
4 record because the voter signed with a middle name, nickname, or initials, the ballot may
5 be counted as long as the last name and handwriting are clearly the same. Wash. Admin.
6 Code § 434-261-050.

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8 23. There are no standards employed by the Defendants whatsoever to guide individual
9 county level reviewers in determining what characteristics to look for when determining
10 when “handwriting is clearly the same.”

11 24. Respecting the policy choice of the State, the signature match process employed by
12 Defendants to confirm mail ballots is racially discriminatory in its implementation and
13 effect.

14
15 25. Signature match reviewers are lay persons drawn from the community without specialty
16 training in signature analysis.

17 26. The Defendants’ implementation of signature matching to verify ballots has resulted in
18 Latino voters in Washington having their ballots rejected at substantially higher rates than
19 their non-Latino counterparts across the state of Washington.

20
21 27. The Fourteenth and Fifteenth Amendments of the United States Constitution guarantee
22 the fundamental right to vote and prohibit the denial or abridgment of this right due to
23 race. Section 2 of the Fifteenth Amendment authorized Congress to pass the Voting
24 Rights Act, 52 U.S.C. § 10301. Rejecting ballots because of the race of the voter
25 constitutes a denial of the right to vote, in violation of the Fourteenth and Fifteenth
26 Amendment. Rejecting ballots because of the race of the voter constitutes abridgement

1 of the right to vote on account of race and language minority status, in violation of
2 Section 2 of the federal Voting Rights Act.

3
4 **II. JURISDICTION AND VENUE**

5 28. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

6 29. This Court has personal jurisdiction over Defendants, who are elected or appointed
7 officials for the State of Washington or Washington Counties and are sued only in their
8 official capacities as officials of the State of Washington and are residents of the State of
9 Washington. The violations complained of concern their conduct in such capacity.

10 30. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part
11 of the events or omissions giving rise to Plaintiffs' claims occurred and will occur in this
12 judicial district.

13 31. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C.
14 §§ 2201 and 2202.

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16
17 **III. PARTIES**

18 32. Plaintiff Marissa Reyes is over the age of 18, registered to vote, and is Latino.

19 33. Ms. Reyes resides in Benton County.

20 34. In 2020, Ms. Marissa Reyes voted in the primary election and signed her ballot envelope
21 declaration.

22 35. Plaintiff Marissa Reyes had her ballot rejected in the 2020 primary election and was not
23 able to cure her ballot.
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1 36. Ms. Reyes received a letter in the mail from Benton County Elections Office. She was
2 unable to cure her signature.

3 37. Plaintiff League of United Latin American Citizens (“LULAC”) is the oldest and largest
4 national Latino civil rights organization in the United States. LULAC is a non-profit
5 membership organization with a presence in most of the fifty states, including
6 Washington. It was founded with the mission of protecting the civil rights of Latinos,
7 including voting rights.
8

9 38. LULAC participates in civic engagement activities, such as voter registration, voter
10 education, and voter turnout efforts throughout the United States.

11 39. LULAC’s mission to educate voters, includes expending resources to ensure that LULAC
12 membership and Latinos are able to have their ballots counted.
13

14 40. LULAC has to expend more resources to educate voters due to their membership being at
15 higher risk of being disenfranchised due to disproportionate rate of ballot rejection.

16 41. LULAC has been recognized and accepted as an organizational plaintiff protecting
17 Latino rights in federal courts across the country, including the United States Supreme
18 Court.

19 42. Plaintiff Latino Community Fund of Washington is a statewide organization that invests
20 in community based non-profit organizations that serve to educate, increase civic
21 participation, improve health outcomes, and improve economic, social and technological
22 development for all Washingtonians.
23

24 43. Latino Community Fund (LCF) of Washington participates in civic engagement
25 activities, such as voter registration, voter education, and voter turnout efforts statewide
26 but specifically in Yakima County, Benton County, and Chelan County. LCF of

1 Washington's mission to educate voters includes expending resources to educate Latino
2 on how to cure their ballots and ensure their ballots count.

3 44. LCF of Washington has to expend more resources in Yakima County, Benton County and
4 Chelan County to educate voters due to the higher risk of Latino voters being
5 disenfranchised due to the disproportionate rate of ballot rejection.

6 45. LCF of Washington funds organizations across the state that engage in voter outreach and
7 voter education by registering voters who are eligible to, have voted, and plan to vote in
8 Washington through the mail voting system.

9 46. LCF of Washington engages in voter education and voter empowerment activities,
10 including educating voters on how to properly vote in Washington.

11 47. LCF of Washington also leads legislative advocacy with community leaders regarding
12 the impact of legislation on the Latino community.

13 48. Defendants Brenda Chilton, Andy Miller and Jerome Delvin are current members of the
14 Benton Board of Canvassers for Benton County. They have authority to determine
15 whether a signature matches the signature on file for a given voter during the ballot
16 processing stage. The members of the Board of Canvassers for Benton County are each
17 being sued in their official capacity only.

18 49. Defendants Charles Ross, Joseph Brusich and Ron Anderson are current members of the
19 Yakima Board of Canvassers for Yakima County. They have authority to determine
20 whether a signature matches the signature on file for a given voter during the ballot
21 processing stage. The members of the Board of Canvassers for Yakima County are each
22 being sued in their official capacity only.
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1 50. Defendants Skip Moore, Douglas J. Shae and Bob Bugert are current members of Chelan
2 County Board of Canvassers. They have authority to determine whether a signature
3 matches the signature on file for a given voter during the ballot processing stage. The
4 members of the Board of Canvassers for Chelan County are each being sued in their
5 official capacity only.
6

7
8 **IV. FACTUAL ALLEGATIONS**

9 **Mail Voting in the State of Washington**

10 51. In 2005, the State of Washington passed multiple election reforms, chief among them
11 was that counties were given the option of conducting elections entirely by mail. This
12 reform resulted in over two-thirds of counties in Washington utilizing the mail ballot-
13 only election voting scheme.
14

15 52. In 2011, Senate Bill 5142 was signed into law, replacing the existing election
16 infrastructure and mandating that all counties in the State of Washington conduct their
17 elections by mail.

18 53. Since 2013, Washington voters vote almost entirely by mail through this system.

19 54. The mail voting system in Washington is governed by Chapter 29A.40 of the Washington
20 Code.
21

22 55. Under Washington's mail voting system, "each active registered voter of the state,
23 overseas voter, and service voter shall automatically be issued a mail ballot for each
24 general election, special election, or primary." Wash. Rev. Code Ann. § 29A.40.010.
25
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1 56. After a voter has received her ballot, that voter must properly mark up her ballot, if she
2 chooses to vote. After marking the ballot, the voter is required to place the ballot into a
3 security envelope, which conceals the voted ballot. Wash. Rev. Code Ann. § 29A.40.091.

4 57. In order to properly cast a mail ballot, a voter is required to sign the declaration that is
5 printed on the outer return envelope on the mail ballot, which is sent out by the respective
6 county auditor along with the voter's ballot.
7

8 58. Under Wash. Rev. Code Ann. § 29A.40.091(2),

9 The voter must swear under penalty of perjury that he or she meets the
10 qualifications to vote and has not voted in any other jurisdiction at this election.
11 The declaration must clearly inform the voter that it is illegal to vote if he or she
12 is not a United States citizen; it is illegal to vote if he or she has been convicted of
13 a felony and has not had his or her voting rights restored; and it is illegal to cast a
14 ballot or sign a ballot declaration on behalf of another voter. The ballot materials
15 must provide space for the voter to sign the declaration, indicate the date on
16 which the ballot was voted, and include a telephone number.

17 59. Once a voter signs the declaration, the voter must return her ballot to the county auditor
18 no later than 8:00pm on the day of the election or mail the ballot with a postmark no later
19 than the day of the election. Wash. Rev. Code Ann. § 29A.40.091(4).
20

21 60. Once a voter's ballot has been received, election officers may begin opening and
22 processing the return envelopes for any primary or elections upon receipt. Wash. Rev.
23 Code Ann. § 29A.40.110(1). Before the processing of a ballot, "the canvassing board, or
24 its designated representatives, shall examine the postmark on the return envelope and
25
26

signature on the declaration before processing the ballot.” Wash. Rev. Code Ann. § 29A.40.110(3).

61. The canvassing board and designated representatives assign staff to verify that the voter’s signature on the ballot envelope declaration is the same as the signature in the voter registration files of the County. *Id.*
62. The Washington State Voter Registration Form publicly available does not inform voters that their signature will later be used to verify their mail ballots. *See* WASHINGTON SECRETARY OF STATE, https://www.sos.wa.gov/_assets/elections/abvr/forms/english/vrf_english_web_a5.pdf.
63. There is no indication that county officials inform voters that the signature on their voter registration will be later matched to their ballots.
64. When voters register to vote through the Washington Department of Licensing, voters affix their voter registration signatures on an electronic signature pad. There is no indication that the Washington Department of Licensing staff informs each voter that the electronic signature used for their driver’s license will be later matched to their ballots.
65. Staff assigned to verify signatures are required to receive training on statewide standards for signature verification. Wash. Rev. Code Ann. § 29A.40.110(3).
66. Signature verification training is not mandated for the canvassing review board.
67. Instead, “The secretary of state shall prepare a training program for county canvassing board members. The training shall be made available upon request.” Wash. Admin. Code § 434-260-320.
68. A variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of

1 common nicknames is permitted so long as the surname and handwriting are clearly the
2 same. Wash. Rev. Code Ann. § 29A.40.110(3).

3 69. If the signature on the ballot declaration does not match the signature on the registration
4 record because the voter signed with a middle name, nickname, or initials, the ballot may
5 be counted as long as the last name and handwriting are clearly the same. Wash. Admin.
6 Code § 434-261-050.

7
8 70. If the canvassing board or designated representative perceives a discrepancy between the
9 signature on file and the signature on the ballot, “the county auditor shall notify the voter
10 by first class mail of the correct procedures for curing the signature.” Wash. Admin.
11 Code § 434-261-050. This also applies to cases in which the voter neglects to sign a
12 ballot envelope declaration or signs with a mark and fails to have two witnesses attest to
13 the signature.

14
15 71. If the signature on the declaration does not match the signature on the voter registration
16 record, the voter must either: (a) Appear in person and sign a new registration form no
17 later than the day before certification of the primary or election. The updated signature
18 provided on the registration form becomes the signature in the voter registration record
19 for the current election and future elections; or (b) Sign a signature update form that
20 includes both the ballot declaration required by WAC 434-230-015 and the voter
21 registration oath required by RCW 29A. 08.230 and return it to the county auditor no
22 later than the day before certification of the primary, special or general election. The
23 signature provided on the signature update form becomes the signature in the voter
24 registration record for the current election and future elections. Wash. Admin Code 434-
25 261-050(3).
26

1 72. If the ballot is received during the last three business days before the final meeting of a
2 county's canvassing board or the voter has already been notified of the discrepancy and
3 has not responded by the last three days before the final canvassing review board
4 meeting, the county auditor is required to notify the voter by telephone. Wash. Admin
5 Code 434-261-050(1).
6

7 73. If a voter does not cure or correct their signature mismatch, their vote will not be counted.

8 74. Regardless of a curing period or provision, voters may still have their vote denied due to
9 a signature mismatch or mis-verification even after a voter attempts to cure their ballot by
10 either appearing in-person at the county elections office or by mailing in the required
11 forms.

12 **Discrimination in Signature Verification**

13
14 75. Defendants' system of reliance on signature verification, implemented by untrained or
15 somewhat trained persons, is a flawed means of determining whether a mail ballot was
16 fraudulently cast by a voter.

17 76. Generally, no two signatures, even by the same signer, are the same.

18 77. Moreover, the signature on file that officials are comparing to the signed affidavit may be
19 years if not decades old.

20
21 78. A signature by a voter can vary due to intentional or unintentional factors. *See* Tomislav
22 Fotake, et al., *Handwritten signature identification using basic concepts of graph theory*,
23 WSEAS TRANSACTIONS ON SIGNAL PROCESSING 117,117 (2011).

24 79. Signature matching processes are particularly burdensome and harmful for racial and
25 ethnic minority voters.
26

1 80. A report by Dr. Daniel Smith, studying ballot rejections in Florida, found that in multiple
2 elections, ballots cast by Black registered voters in Florida were twice as likely to be
3 rejected as those cast by older white voters. *See* Daniel A. Smith, *Vote-by-Mail Ballots*
4 *Cast In Florida*, American Civil Liberties Union of Florida (Sep. 19, 2018),
5 http://www.aclufl.org/sites/default/files/aclu_vote_by_mail_report.pdf.

6
7 81. Washington law does provide some guidance for signature verification that counties are
8 required to follow.

9 82. Acceptable variations that do not disqualify a ballot include the substitution initials of a
10 voter and the use of common nicknames as long as the “surname and handwriting is
11 clearly the same.” *See* Wash. Rev. Code Ann. §29A.40.110(3).

12 83. If the signature on the registration record does not match due to a different last name, a
13 “ballot may be counted as long as the first name and handwriting is clearly the same”.
14 Wash. Admin. Code §434-261-050.

15
16 84. Washington law does not define what makes the handwriting of a voter “clearly the
17 same.”

18 85. While there is statewide guidance for the signature verification process, it provides a
19 great deal of discretion to individual county board of canvassers in determining whether
20 the handwriting of a voter on their ballot declaration matches that on file.

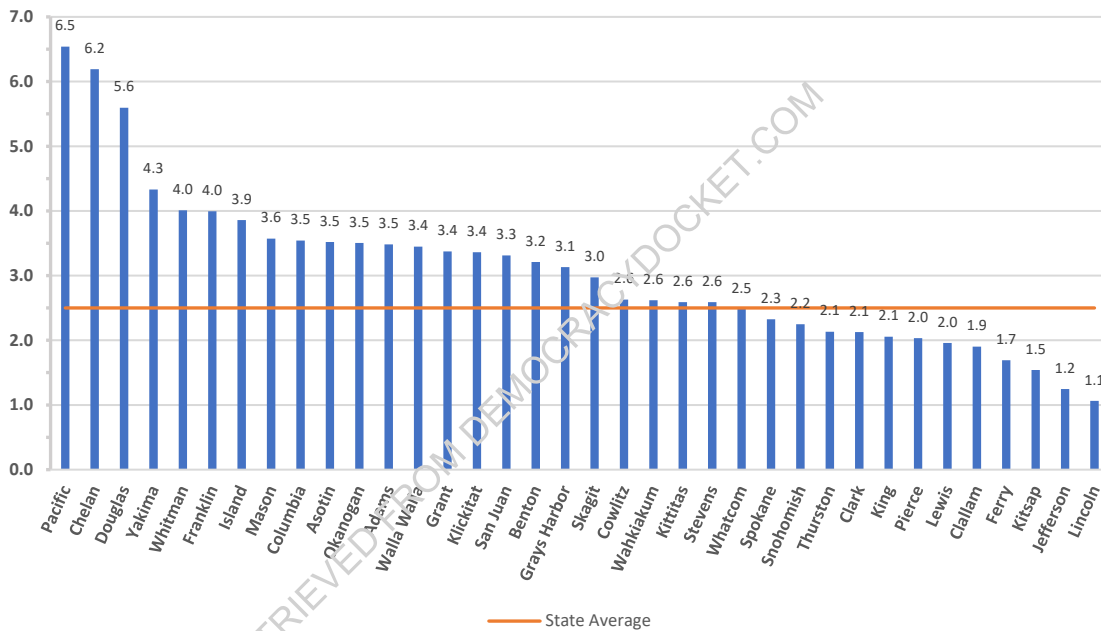
21
22 86. This discretion has been applied in a discriminatory way towards Latino voters in almost
23 all counties in the State of Washington, including Yakima, Benton, and Chelan Counties.

24 **Washington’s Signature Matching Requirement Is Applied in a Manner that**
25 **Unconstitutionally Burdens Latino Voters**

- 1 87. The signature matching policy in the State of Washington has the effect of discriminating
2 again Latino voters.
- 3 88. The lack of clearly intelligible standards for what constitutes “handwriting that is clearly
4 the same” allows for the untrained discretion of the canvassing review board, which has
5 had the effect of disproportionately burdening Latino voters in the State of Washington.
- 6 89. Ballot status files publicly provided by the Washington Secretary of State for all elections
7 conducted in 2019 and 2020 show a clear pattern: Latino voters or those with Spanish
8 surnames are having their ballots rejected at higher rates than Anglo or White voters for
9 the reason of a mismatched signature.
- 10 90. Compared to Anglo voters, Latinos were 2.5 times more likely to have their ballots
11 rejected because of a signature mismatch on average for the primary, special, and general
12 elections occurring during 2019 and 2020 primary.
- 13 91. Signature mismatch rejection rates vary by county.
- 14 92. Across all elections in 2019 and 2020, Latino voters in Yakima County were 4.3 times
15 more likely to have their ballots rejected for a mismatched signature compared to Anglo
16 voters.
- 17 93. Across all elections in 2019 and 2020, Latino voters in Chelan County were 6.2 times
18 more likely to have their ballots rejected for a mismatched signature compared to Anglo
19 voters.
- 20 94. Across all elections in 2019 and 2020, Latino voters in Benton County were 3.2 times
21 more likely to have their ballots rejected for a mismatched signature compared to Anglo
22 voters.
- 23 94. Across all elections in 2019 and 2020, Latino voters in Benton County were 3.2 times
24 more likely to have their ballots rejected for a mismatched signature compared to Anglo
25 voters.
- 26

95. The figure below shows how many times higher the signature mismatch rejection rate was for Latino voters compared to Anglo voters in Washington counties across all elections in 2019 and 2020. Note that the Garfield, Pend Oreille, and Skamania counties did not reject any ballots cast by Latino voters for signature mismatch and are not included in the chart.

96.



97. In the 2020 general election, Latino voters in Yakima County were 3.9 times more likely to have their ballots rejected for a mismatched signature compared to Anglo voters.

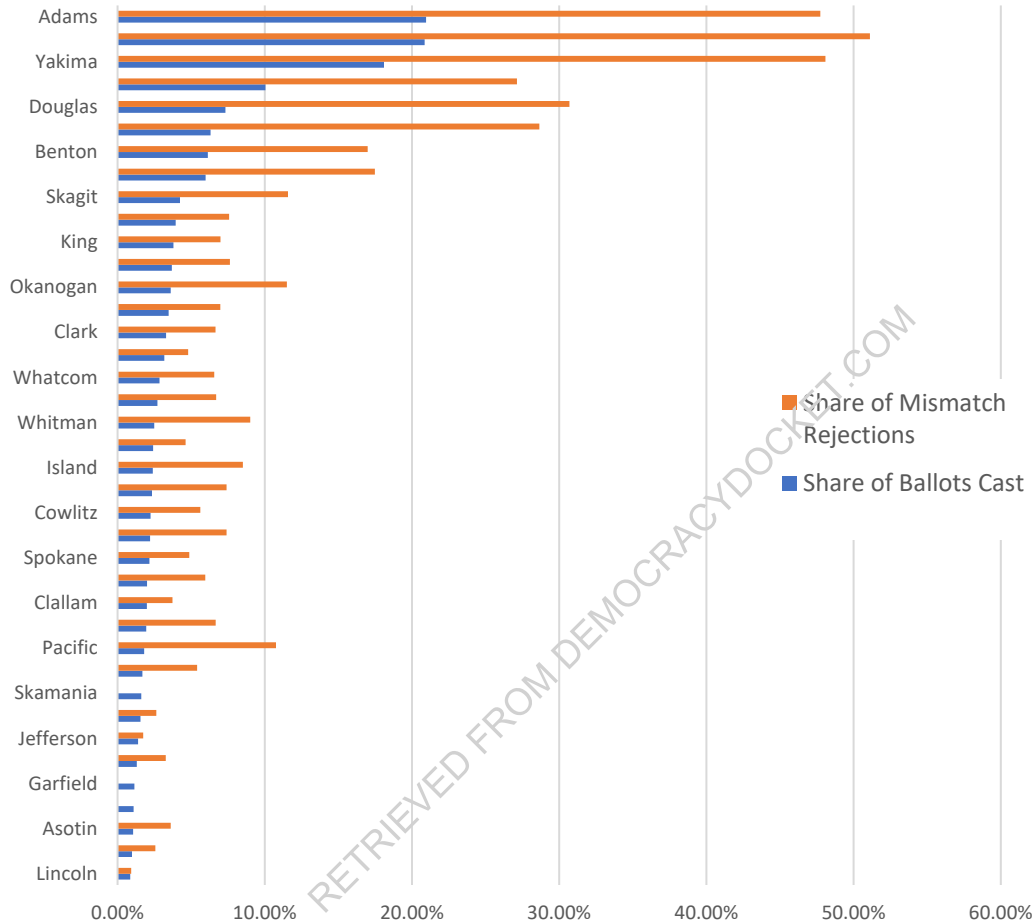
98. In the 2020 general election, Latino voters in Chelan County were 3.2 times more likely than Anglo voters to have their ballots rejected for a perceived signature mismatch.

99. In the 2020 general election, Latino voters in Benton County were 3 times more likely to have their ballots rejected for a perceived signature mismatch.

- 1 100. Compared to the 2019 general election, Latino voter turn-out tripled in the general 2020
2 election. The increase in Latino voter turn-out correlated with an increase in Latino
3 surname ballot rejections due to a perceived mismatched signature. The rate of rejection
4 for Latino surname ballots, due to a perceived signature mismatch, doubled.
- 5 101. In the 2020 general election, Latino voters, statewide, were 3 times more likely to have
6 their ballots rejected compared to Anglo voters.
- 7 102. In Yakima County, Latino voter turn-out increased from 16% to 56% between the 2019
8 general election and the 2020 general election. Comparatively, non-Latino voter turn-out
9 increased from 42% to 84% between the 2019 general election and the 2020 general
10 election.
- 11 103. Latino voters are less likely to vote after having their ballots rejected for a perceived
12 mismatched signature.
- 13 104. Latino voters whose ballots were rejected due to a signature mismatch in 2019 were 3
14 times more likely to not vote in 2020 compared to other Latino voters who did not have
15 their ballots rejected for a mismatched signature.
- 16 105. While the likelihood of signature mismatch ballot rejection varied for all voters
17 depending on a voter's county of residence, Latino voters continually faced higher
18 mismatch compared to non-Latino and/or Anglo voters regardless of what county of
19 residence a Latino voter lived in.
- 20 106. Simply put, a Latino voter in almost all counties in Washington was more likely than any
21 Anglo voter to face a signature mismatch rejection.
- 22 107. Compared to their share of total ballots cast, Latino voters are overrepresented in their
23 share of signature mismatch rejected ballots.
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108. The figure below provides a visualization of the share of Latino ballots rejected for signature mismatch compared to the Latino populations share of the vote per county.

109.



110. Defendants’ unreliable signature verification process disproportionately rejects a significant number of validly cast ballots specifically by Latino voters as a result of Defendants’ discretion, disparate treatment of Latino voters and lack of intelligible signature matching standards.

- 1 111. Defendants’ discriminatory application of the signature matching provision in a
2 discriminatory manner has caused a disparate effect targeting Latino voters based on their
3 race and/or ethnicity.
- 4 112. Because ballots being reviewed show the voter’s name and surname, Latino surnames are
5 being flagged at higher rates and facing more intense scrutiny because of the voter’s
6 surname.
- 7
8 113. Latino ballots are being rejected for signature mismatch *on account of* the perceived race
9 of the voter.
- 10 114. This practice is clearer in counties with higher Latino populations. Latinos comprise
11 37% of the total population and 21% of the voting population in eight counties—Adams,
12 Benton, Chelan, Douglas, Franklin, Grant, Walla Walla, and Yakima— in Central and
13 Eastern Washington. Latinos in these counties account for 29% of the total Latino voting
14 population in Washington. *See* Joy Borkholder, *Latino Voters Have Higher Than*
15 *Average Ballot Signature Rejection Rates in Washington State*, InvestigateWest (Feb. 15,
16 2021), [https://www.inyy.org/2021/02/15/latino-voters-have-higher-than-average-ballot-](https://www.inyy.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/)
17 [signature-rejection-rates-in-washington-state/](https://www.inyy.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/).
- 18
19 115. “In these eight counties, Latino voters contributed 17% of accepted ballots in November
20 2020, but 46% of ballot rejections.” *Id.*
- 21
22 116. Latino voters are also correcting or curing their signatures when flagged at lower rates
23 than non-Latino voters. *Id.*
- 24 117. Two of the major cities in these eight counties, the City of Yakima and the City of Pasco,
25 have both been found in violation of Section 2 of the Voting rights Act for their
26 discriminatory election systems.

1 118. The burden placed on Latino voters is excessive because it interacts with socioeconomic
2 disparities.

3 119. Here, in the State of Washington, voters may not be notified of their challenged ballot for
4 weeks AFTER Election Day and may not be notified with sufficient time to cure their
5 ballots.

6 120. Voters have to either appear in-person at the county elections office in order to cure their
7 challenged ballot or have to fill out multiple forms and return such forms in the mail.

8 121. Due to the socioeconomic conditions and socioeconomic disparity of Latino voters, these
9 additional actions required of Latino voters places an undue burden on accessing the
10 franchise.

11 122. The burden is not slight. The burden is excessive. This burden is demonstrated by the
12 low rate at which Latino voters respond to the challenge and are able to effectively cure
13 their ballots.
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15

16 **V. CLAIMS FOR RELIEF**

17 **Count 1**

18 **Race and Language Minority Discrimination,**

19 **Section 2 of the Voting Rights Act**

20 **52 U.S.C. § 10301**
21

22 123. Plaintiffs' repeats, repleads, and incorporates by reference, as though fully set forth in
23 this paragraph, all allegations in this Complaint.

24 124. Washington's Latino voters are disproportionately burdened by the signature matching
25 policy in the State, as Latino voters are more than twice as likely as Anglo voters to have
26

1 their signatures flagged for mismatch. Latino voters in Yakima, Benton and Chelan
2 Counties are three to six times more likely to have their ballots rejected due to a signature
3 mismatch. Consequently, voters who have had their ballots flagged must correct or cure
4 their ballot in order for their vote to be processed and counted.

5 125. Latino voters, however, cure their ballots at lower rates than non-Latino voters.

6 126. When a Latino voter's ballot is flagged, there is a higher likelihood that they will not
7 have their ballot counted compared to non-Latino voters and will be denied their right to
8 vote.

9 127. Defendants' implementation of the signature matching policy violates Section 2 of the
10 Voting Rights Act, 52 U.S.C. § 10301, because it results in the denial of the right to vote
11 on account of race and language minority status, insofar as, under the totality of the
12 circumstances, Plaintiffs and minority voters are denied an equal opportunity to
13 participate effectively in the political process.

14 128. Voters with Spanish surnames in these Washington State counties bear the effects of
15 discrimination in education, employment and health, which hinder their ability to
16 participate in the political process. These socioeconomic disparities interact with
17 signature verification process to create an excessive burden to the equal opportunity to
18 vote.

19 129. The application of Washington's signature matching policy's by the Defendants in
20 Yakima, Benton, and Chelan counties in Washington violates Section 2 because it denies
21 and abridges the right to vote on account of race and language minority status.
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Count 2

Race and Language Minority Discrimination,

Section 2 of the Voting Rights Act

52 U.S.C. § 10301

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6 130. Plaintiffs' repeats, repleads, and incorporates by reference, as though fully set forth in
7 this paragraph, all allegations in this Complaint.

8 131. The application of Washington's signature matching policy by individual counties and
9 named Defendant counties intentionally discriminates against Latino voters.

10 132. The County Defendants, through the canvassing boards, are rejecting Latino ballots for
11 signature mismatch *on account of* the perceived race of the voter when examining the
12 voter's signature.

13
14 133. Washington's signature matching policy violates Section 2 of the Voting Rights Act, 52
15 U.S.C. § 10301, because the Defendants are intentionally applying the law in a
16 discriminatory manner and placing a burden on Latino voters.

17 134. Plaintiffs and minority voters are denied an equal opportunity to participate effectively in
18 the political process.

19
20 135. Washington's signature matching policy's application by the canvassing boards in
21 counties in Washington violates Section 2 because it denies and abridges the right to vote
22 on account of race and language minority status.

Count 3

**Arbitrary Disenfranchisement in Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution**

42 U.S.C. § 1983

136. Plaintiffs’ repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all allegations in this Complaint.

137. Voters in the Defendant Counties face burdens on their ability to have their vote counted based on their race, as Latino voters have their ballots rejected for signature mismatch over three times higher than Anglo voters.

138. Latino voters are being treated unequally in access to the franchise as a class across the state of Washington due to both the signature matching requirement under Washington law and the application of such requirement by the individual canvassing boards.

139. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v Gore*, 531 U.S. 98, 104-05; *see also id.* at 106 (finding that voting procedures that “vary not only from county to county but indeed within a single county” are not “sufficient [to] guarantee[] equal treatment”); *see, e.g., Harper v. Va. Bd. of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”).

1 140. Defendants’ application and implementation of the signature matching requirement
2 creates disparate burdens on Latino voters across and within counties and allows arbitrary
3 disenfranchisement in violation of the Equal Protection Clause of the Fourteenth
4 Amendment.
5

6 **Count 4**

7 **Violation of Plaintiffs’ Fundamental Right to Vote**

8 **First and Fourteenth Amendments**

9 **42 U.S.C. § 1983**

10 141. Plaintiffs’ repeats, repleads, and incorporates by reference, as though fully set forth in
11 this paragraph, all allegation in this Complaint.

12 142. The First and Fourteenth Amendments of the United States Constitution protect the
13 fundamental right to vote. See *Burdick v. Takushi*, 504 U.S. 428, 433-44, 112 S.Ct. 2059,
14 60 USLW 4459 (1992). The political franchise of voting “is regarded as a fundamental
15 political right, because preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370,
16 6 S.Ct. 1064, 30 L.Ed. 220 (1886). “Having once granted the right to vote on equal
17 terms, the State may not, by later arbitrary and disparate treatment, value one person’s
18 vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05, 121 S.Ct. 525, 148
19 L.Ed.2d 388 (2000).
20

21 143. When analyzing the constitutionality of a restriction on voting, the Court “must weigh
22 ‘the character and magnitude of the asserted injury to the rights protected by the First and
23 Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests
24 put forward by the State as justifications for the burden imposed by its rule,’ taking into
25
26

1 consideration ‘the extent to which those interests make it necessary to burden the
2 plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S.
3 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). When a burden on the right to vote is
4 severe or discriminatory, the regulation must be “narrowly drawn to advance a state
5 interest of compelling importance.” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289, 112
6 S.Ct. 698, 116 L.ed.2d 711 (1992)).

7
8 144. Defendants’ application of Washington’s signature matching policy disproportionately
9 affects Latino voters because Latino voters are, on average, more than three times as
10 likely as Anglo voters of having their ballots rejected due to mismatch. This places
11 Latino voters at higher risk of total disenfranchisement than Anglo voters because Latino
12 voters bear the burden to correct or cure their ballots.

13
14 145. The burden is made even more severe by Washington’s virtually all-mail elections.
15 Latino voters are not given the opportunity to utilize other voting methods in a
16 meaningful way and simply cannot vote elsewhere in order to cast a ballot that is not at a
17 higher risk than non-Latino voters of being rejected for signature mismatch.

18 146. The burden is made even more severe by the socioeconomic disparities of Latino voters
19 and how these disparities interact with the voter verification processes.

20 147. The application of the signature matching requirement unconstitutionally burdens the
21 fundamental right of Latino voters in Defendant Counties to access the franchise,
22 including individual and organizational Plaintiffs, in violation of the First and Fourteenth
23 Amendments to the U.S. Constitution.
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Count 5

Violation of Plaintiffs' Right to Vote Free from Racial Discrimination

Fifteenth Amendment

42 U.S.C. § 1983

148. Plaintiffs' repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all allegations in this Complaint.

149. The signature matching policy in the State of Washington permits intentional discrimination, as those with Latino surnames and Latino voters are able to be flagged for a signature mismatch and have their ballots rejected at a higher rate than non-Latino voters by the canvassing boards in each county.

150. This system discriminates against Plaintiffs on the basis of race and national origin in violation of the Fifteenth Amendment to the U.S. Constitution.

Count 6

The Challenged Provisions Result in the Denial of Procedural Due Process

Fourteenth Amendment

42 U.S.C. § 1983

151. Plaintiffs' repeats, repleads, and incorporates by reference, as though fully set forth in this paragraph, all allegation in this Complaint.

152. The Fourteenth Amendment of the United States Constitution prohibits states from depriving "any person of ... liberty... without due process of law...." U.S. Const. amend. XIV, § 1.

1 153. The right to vote is a constitutional right and citizens retain a liberty interest in voting. In
2 the State of Washington, the right to vote is equated with the right to vote using a mail
3 ballot, as Washington has created a mail voting scheme. Voters, therefore, have and
4 retain a liberty interest in voting using mail ballots and any state laws governing that
5 policy must comply with the Due Process Clause. *See Wilkinson v. Austin*, 545 U.S. 209,
6 221, 545 U.S. 209, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005) (“A liberty interest may arise
7 from the Constitution itself, by reason of guarantees implicit in the word ‘liberty’... or it
8 may arise from an expectation or interest created by state laws or policies.”).

10 154. Once a plaintiff shows that the State has deprived them of a liberty interest and that the
11 state has done so without due process of law, the Court applies a three-part balancing test,
12 first set out in *Mathews v. Eldridge*, 424 U.S. 319, 424 U.S. 319, 96 S.Ct. 893, 47
13 L.Ed.2d 18 (1976). Courts balance: (1) the private interest affected by the official action;
14 (2) the risk of an erroneous deprivation and “the probable value, if any, of additional or
15 substitute procedural safeguards”; and (3) the “government’s interest, including the
16 function involved and the fiscal and administrative burdens that the additional or
17 substitute procedural requirements would entail.” *Id.* at 335.

19 155. Defendants’ application of the State of Washington’s signature matching policy violates
20 the Due Process Clause because individual boards of canvassers are implementing a
21 curing process that is standardless: Counties are permitted to reject ballots based on their
22 own assessment, discretion and standards. Inasmuch as this standardless assessment is
23 applied and individual boards of canvassers have discretion to determine what
24 handwriting is “clearly the same”, Latino voters are denied their private liberty interest
25 without due process of law.
26

- 1 156. Defendants' application of the State of Washington's signature matching policy also
2 violates the Due Process Clause by implementing divergent practices and procedures
3 across the state that allow some voters more opportunities than others to cure their ballots
4 (e.g., some counties mail a self-addressed stamped envelope in order to facilitate the
5 return of a voter's signature cure form; some counties allow receipt of cure forms up until
6 one day prior to the day of certification whereas other counties allow receipt of cure
7 forms up until three days prior to the day of certification; some counties call voters
8 multiple times; some counties email as well as mail letters to inform voters of their
9 challenged ballot).
- 10
- 11 157. Voters have a significant private interest in having one's vote counted, as voting is a
12 "fundamental political right" that is "preservative of all rights." *Yick Wo v. Hopkins*, 118
13 U.S. at 370.
- 14
- 15 158. There is a substantial risk of erroneously depriving a Latino voter of their right to vote by
16 permitting individual board of canvassers and their designated representatives to
17 determine what handwriting is "clearly the same" and to reject ballots based on their
18 cursory, unfettered discretion that two signatures do not match.
- 19
- 20 159. The government's interest in maintaining the integrity of an election weighs in favor of
21 reforming the signature matching policy, as election integrity depends on counting all
22 ballots that are legitimately cast. Any additional burdens the government may incur are
23 minimal in light of the substantial burden on voters.
- 24
- 25 160. Latino voters who are having their ballots rejected due to the signature matching policy,
26 as implemented by the counties, are being deprived of Due Process under the Fourteenth
Amendment.

VI. PRAYER FOR RELIEF

1
2 Plaintiffs, on their behalf and on behalf of the members of the Class, request that the
3 Court:

4
5 161. Declare that Defendants' application of Wash. Rev. Code Ann. §29A.40.110 violates the
6 United States Constitution;

7
8 162. Declare that Defendants' application of Wash. Rev. Code Ann. §29A.40.110 violates
9 Section 2 of the Federal Voting Rights Act 52 U.S.C. § 10301;

10
11 163. Enjoin Defendants, their agents and successors, and all persons acting in concert with, or
12 as agents of, any Defendants in this action from implementing RCW 29A.40.110 and
13 Wash. Admin. Code §434-261-050 in any future elections in the State of Washington
14 without first implementing the following measures:

15 a. Adopt, after consultation with appropriate subject matter experts, published
16 standards for determination of matching signatures

17 b. Adopt and publish a training manual approved by appropriate experts

18 c. Design and implement a quality control methodology that checks at random
19 intervals, rejected signatures for lack of compliance with the published standards

20 d. Design and implement a meaningful process to permit a voter to timely cure a
21 ballot determined to contain a mismatched signature

22 e. Publish, after each election, the number of rejected ballots by race of the voter and
23 voting precinct

24 f. Publish the names of election staff and Canvassing Review Board members who
25 receive training and date of such training
26

- 1 g. Provide Cure Forms and Signature Update Forms in Spanish on County Auditor's
2 webpage and in County Elections Offices.
- 3 h. Require Canvassing Review Board and Election Staff training be open to the
4 public and that all persons be permitted to attend.
- 5 i. Publish notice of meeting location and time in county libraries and other
6 community locations.
- 7 j. Require Canvassing Review Boards to conduct their meetings at a time and
8 location that is accessible to the public to ensure public is informed and able to
9 attend.
- 10 k. Follow all further remedies recommended by expert testimony.
- 11
- 12 164. An order, pursuant to 42 U.S.C. § 1988, 52 U.S.C. § 10310, and other applicable laws,
13 for Defendants to pay all costs, including reasonable attorneys' fees and litigation
14 expenses incurred by Plaintiffs in connection with this action; and Grant any other relief
15 that the Court may deem just and proper, and as may be necessary to afford Plaintiffs the
16 full relief to which they are entitled under the United States Constitution and the Voting
17 Rights Act.
- 18
- 19 165. Grant any other relief that the Court may deem just and proper, and as may be necessary
20 to afford Plaintiffs the full relief to which they are entitled under the United States
21 Constitution and the Voting Rights Act.
- 22

23 Dated this 20th day of May, 2021.

Respectfully submitted,

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